

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re Jo. M., a Person Coming Under the
Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES
AGENCY,

Plaintiff and Respondent,

v.

R.C.,

Defendant and Appellant;

Ju. M.,

Defendant and Respondent.

G040558 & G040769

(Super. Ct. No. DP016995)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Gary Bischoff, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Reversed and remanded.

Kate M. Chandler, under appointment by the Court of Appeal, for
Defendant and Appellant.

Benjamin P. de Mayo, County Counsel, and Karen L. Christensen and
Aurelio Torre, Deputy County Counsel, for Plaintiff and Respondent.

Merrill Lee Toole, under appointment by the Court of Appeal, for
Defendant and Respondent.

No appearance for the Minor.

* * *

R.C., mother of Jo. M., appeals from the judgment of the juvenile court adjudicating her son a dependent and subsequently terminating jurisdiction and changing custody to Ju. M., the father. She contends the notice of hearing did not satisfy due process requirements and the hearing was conducted by a commissioner without authorization. We agree that the notice was inadequate; accordingly, we reverse and remand.

FACTS

Ten-year-old Jo. M. was taken into protective custody on May 8, 2008, by the Orange County Social Services Agency (SSA) after his mother, R.C., beat him with an electrical cord. The mother was arrested, charged with child endangerment, and incarcerated. Jo. M. was released to the custody of his father, Ju. M., who had been divorced from the mother for about eight years.

SSA filed a dependency petition and a detention hearing was set for May 13. The juvenile court served the mother with a notice of the detention hearing, but it was not deposited in the mail until May 14. The mother did not appear on May 13. The court appointed counsel for the father, who was present, and acknowledged that the Public Defender's office "would be accepting appointment on the mother should she arrive in this matter" Frank Ospino, the deputy public defender who was present in the courtroom, agreed that the office would do so. The court then trailed the matter for

one day because it “ha[d] some question about whether or not the mother has received notice of the proceedings. . . . [T]he court was informed she may have been in custody when notice was sent” The father’s counsel and the deputy public defender signed a stipulation for the commissioner to act as a temporary judge. The next day, the mother again did not appear. The record does not reflect any notice to the mother of the trailed hearing date. The court set a pretrial hearing for June 9 and a contested jurisdiction hearing for June 24.

On June 9, the social worker filed a declaration detailing her communications with the mother about the hearing. She called the mother on May 20 and “informed [her] of the upcoming pretrial/default hearing on June 9, 2008. [She] stated that she does not plan on attending the next scheduled hearing due to a Criminal Court matter.” During a face-to-face meeting on May 30, the social worker “informed [the mother] that she is entitled to legal representation and that failure to appear may result in the child being declared a dependent of [the] Court by reason of default. [The mother] stated that she does not plan on attending the next scheduled hearing due to another hearing involving her criminal case.” The social worker stated she sent a certified letter to the mother on June 3, 2008 informing her of the June 9 hearing and advising her that she was entitled to an attorney and that her failure to appear could result in Jo. M. being declared a dependent of the juvenile court by default.

The record contains a Notice of Hearing on Petition from the superior court dated May 12, 2008. It appears to be a copy of the notice previously prepared for the detention hearing on May 13: The word “detention” and the date “May 13, 2008” are lined out and “pretrial” and “6-9-08” are handwritten above the respective spaces. The words “trial on 6-24-08 at 8:30 am” are handwritten in an empty space on the form underneath the previous information. The proof of service form on the reverse side of the notice is blank. There is, however, a copy of an envelope with a return label dated June 3, 2008 showing that the letter was unclaimed.

At the hearing on June 9, the mother did not appear. The court accepted the father's no contest plea and sustained the petition. Notwithstanding the court's acknowledgement that the hearing was for pretrial, it then removed custody of Jo. M. from the mother, vested legal and physical custody with the father, and terminated the dependency proceedings. It issued family law exit orders providing for the mother to have monitored visitation with Jo. M., at her expense, once a week for two hours in Riverside, where the father lives. The trial date of June 24, 2008 was vacated.

DISCUSSION

The mother appeals, claiming all findings and orders made at the hearings on May 13, May 14, and June 9, 2008, should be vacated because she did not receive proper notice of any hearing. SSA concedes the orders made at the June 9 hearing should be reversed; the father concedes that the mother "might be entitled" to a new disposition hearing. We conclude the orders made on June 9 must be reversed due to defective notice and a lack of due process.

Welfare and Institutions Code section 291¹ provides that a parent who is not present at the detention hearing must be served with notice of the jurisdiction hearing by either personal service or certified mail, return receipt requested. (§ 291, subd. (e)(1).) There is nothing in this record that shows the mother was properly served. Although the social worker declared she sent a certified letter to the mother giving notice of the June 9 hearing, there is no copy of the letter or proof of service in the record. Neither is there a copy of the return receipt, as required. The notice from the court has no proof of service and was returned unclaimed.

The actual notice the mother received did not comport with due process principles. "Parents are entitled to due process notice of juvenile court proceedings affecting the care and custody of their children, and the absence of due process notice to a

¹ All statutory references are to the Welfare and Institutions Code.

parent is a ‘fatal defect’ in the juvenile court’s jurisdiction.” (*In re Claudia S.* (2005) 131 Cal.App.4th 236, 247.) Due process requires that the parent be given notice of the proceedings and an opportunity to be heard. (*Ibid.*) The mother was told the hearing on June 9 could result in Jo. M. being declared a dependent of the court by default if she did not appear. She had no notice that the court would conduct a disposition hearing, change custody to the father, terminate jurisdiction, and issue exit orders proscribing her visitation with her son. A juvenile court may not issue exit orders without notice to the affected parent. (*In re Kelley L.* (1998) 64 Cal.App.4th 1279, 1285.)

Furthermore, the court had information that the mother was engaged in a hearing on her criminal case on June 9. No counsel had been appointed to represent her interests. The court should have continued the proceeding to the June 24 trial date. For all of the foregoing reasons, the orders made on June 9 must be reversed.

DISPOSITION

The judgment is reversed. The case is remanded to the juvenile court for a new jurisdiction and disposition hearing, for which the mother will be given proper notice and the opportunity to receive appointed counsel.

SILLS, P. J.

WE CONCUR:

ARONSON, J.

FYBEL, J.